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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

NATALIE MARTINEZ et al., Plaintiffs and Appellants, v. CITY OF LOS ANGELES et al., Defendants and Respondents.	B259980 (Los Angeles County Super. Ct. Nos. BC448036 & BC471665)

APPEAL from a judgment of the Superior Court of Los Angeles County, Mark V. Mooney, Judge. Affirmed.

Law Offices of Gerald Philip Peters and Gerald P. Peters for Plaintiffs and Appellants.

Michael N. Feuer, City Attorney, Amy Jo Field, Assistant City Attorney, Wendy Shapero, Deputy City Attorney for Defendants and Respondents.

Omar Madrigal was tragically killed and Natalie Martinez was catastrophically injured on October 24, 2009, when the motorcycle on which they were riding collided with a parked truck. At the time of the collision, Madrigal and Martinez were being pursued by Los Angeles Police Department (LAPD) officers, who believed Madrigal was driving under the influence of alcohol or drugs.

Martinez and Madrigal's heirs filed suit against the City of Los Angeles (City) and fourteen officers they claimed were responsible for the collision. The central factual allegation of plaintiffs' complaints was that immediately before the collision, an LAPD vehicle shined a spotlight at Madrigal, blinding him and causing him to lose control of his motorcycle. Plaintiffs urged that this alleged use of a spotlight gave rise to a variety of state law tort claims, violated the Fourth Amendment prohibition against unreasonable seizures, and violated plaintiffs' Fourteenth Amendment right to substantive due process.

Defendants sought and were granted summary judgment, from which plaintiffs appeal. We affirm. As we discuss more fully below, we conclude that there are no triable issues of material fact as to the liability of the individual or municipal defendants for any of the state law torts or federal constitutional violations alleged in the operative complaint. The trial court therefore properly granted summary judgment in favor of all defendants.

FACTUAL AND PROCEDURAL BACKGROUND

I.

The Complaints

On October 22, 2010, Martinez filed the present action against the City (erroneously sued as the LAPD) and Officers Angel Bonilla, Raymond De La Torre, John Acosta, and Liliana Preciado. The complaint alleged that Martinez attended a small party on October 24, 2009. At approximately 1:00 a.m., several LAPD officers arrived and ordered everyone to leave. Martinez left with Madrigal on his motorcycle.

Several police vehicles followed Madrigal's motorcycle. As Madrigal approached the intersection of Eastern Avenue and Lombardy Boulevard, another police vehicle stopped at the intersection and shined a spotlight directly into Madrigal's face, impairing

his vision. As a result, Madrigal crashed his motorcycle into a vehicle parked on Eastern Avenue, killing himself and seriously injuring Martinez.

Martinez alleged that defendants' conduct gave rise to eight causes of action: (1) violation of civil rights (42 U.S.C. § 1983) (first and second causes of action); (2) violation of civil rights in violation of Civil Code section 43 (third cause of action); (3) interference with exercise of civil rights in violation of Civil Code section 52.1 (fourth cause of action)[1]; (4) assault (fifth cause of action); (5) battery (sixth cause of action); (6) willful misconduct (seventh cause of action); and (7) negligence (eighth cause of action).

Subsequent to the filing of the *Martinez* complaint, Madrigal's estate and heirs (Isabel Madrigal, Javier Madrigal, Zunie Zaviar Madrigal, and Zavian Omar Madrigal) (collectively, the Madrigal plaintiffs) filed an action against the same defendants. The operative first amended complaint, filed November 3, 2011, alleged that the defendant officers "shined their powerful and blinding spotlights upon Omar Madrigal as he operated the motorcycle with the intention of blinding Omar Madrigal and disabling him so as to cause him to crash his motorcycle." The Madrigal plaintiffs alleged that defendants' conduct violated the Fourth and Fourteenth Amendments to the United States Constitution, actionable pursuant to 42 United States Code section 1983.

The *Martinez* and *Madrigal* actions were consolidated for all purposes on November 4, 2011. Subsequently, the plaintiffs amended their respective complaints to

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[1] Civil Code section 43 provides: "Besides the personal rights mentioned or recognized in the Government Code, every person has, subject to the qualifications and restrictions provided by law, the right of protection from bodily restraint or harm, from personal insult, from defamation, and from injury to his personal relations."

Civil Code section 52.1, subdivision (b) provides: "Any individual whose exercise or enjoyment of rights secured by the Constitution or laws of the United States, or of rights secured by the Constitution or laws of this state, has been interfered with, or attempted to be interfered with, as described in subdivision (a), may institute and prosecute in his or her own name and on his or her own behalf a civil action for damages . . . ."

add ten additional individual defendants: Officers Marco Pimental, Michael Sanchez, Trevor Whiteman, Edward Castro, Ernie Chavez, Warner Flores, Rafael Hernandez, Johann Aceves, Patrick Marmalejo, and Robert Scutaro.

II.

Defendants' Motion for Summary Judgment

In February 2014, the defendants jointly moved for summary judgment. Defendants urged they were entitled to judgment on each of plaintiffs' causes of action as follows:

Officers Pimental, Sanchez, Whiteman, Castro, Chavez, Flores, Hernandez, Aceves, Marmalejo, and Scutaro: Defendants contended there was no evidence these officers were involved in the pursuit of Madrigal and Martinez, and therefore they could not be liable for any of the state or federal torts alleged. In support, defendants submitted the declaration of the ten officers, who stated either that they had no involvement with the incident or that they arrived at the scene after Madrigal crashed and did not witness the collision.

Officers Bonilla, De La Torre, Acosta, and Preciado: Defendants contended these four officers (a) were immune from liability for the alleged state law torts pursuant to Vehicle Code section 17004, which provides that public employees are not liable for civil damages for injuries resulting from the operation of emergency vehicles during the pursuit of "an actual or suspected violator of the law,"[2] and (b) were not liable for the alleged federal constitutional violations because high speed police pursuits of suspected criminals have been held not to give rise to claims under the Fourth or Fourteen Amendments as a matter of law.

City of Los Angeles: Defendants contended the City (a) was immune from liability for the alleged state law torts pursuant to section 17004.7, which immunizes public entities from liability for damages for injuries resulting from police pursuits of suspected criminals in specific circumstances, and (b) was not liable for any federal

[2] All subsequent undesignated statutory references are to the Vehicle Code.

constitutional violation because there was no evidence it had a custom, policy, or practice that resulted in a violation of Madrigal's or Martinez's constitutional rights.

Plaintiffs opposed the motion for summary judgment. They urged there were triable issues of material fact as to whether an unidentified LAPD officer projected his high-powered spotlight at Madrigal and whether such act was done with the intention of causing Madrigal to crash; whether the LAPD officers' conduct constituted an unreasonable seizure within the meaning of the Fourth Amendment; whether the LAPD officers used excessive force; whether the LAPD officers violated Madrigal's and Martinez's rights to due process; whether defendants were liable for negligence; whether Officers Castro, Chavez, Pimentel, and Scutaro were immune under section 17004; whether the City was immune under section 17004.7; and whether any defendants were liable for intentional torts.

On July 21, 2014, the trial court granted summary judgment for defendants on each of the bases identified in defendants' moving papers. Judgment for defendants was entered on September 17, 2014. Plaintiffs timely appealed.[3]

STANDARD OF REVIEW

"A motion for summary judgment is properly granted . . . when 'all the papers submitted show that there is no triable issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.' ([Code Civ. Proc.] § 437c, subd. (c).) We review a grant of summary judgment de novo and decide independently whether the facts not subject to triable dispute warrant judgment for the moving party as a matter of

[3] In connection with their appeal, plaintiffs filed a request for judicial notice of (1) the distance from the intersection of Norelle Street and Eastern Avenue to the intersection of Eastern Avenue and Lombardy Boulevard, and (2) the distance from the intersection of West 3rd Street and South Spring Street, to the intersection of West 6th Street and South Spring Street. Plaintiffs also requested judicial notice of an aerial map of the intersection where the accident occurred and seven documents relevant to the legislative history of Assembly Bill 1912 (1987-1988 Reg. Sess.). We deferred ruling on the request for judicial notice on March 5, 2015; we now grant the request.

law. [Citation.] The evidence must be viewed in the light most favorable to the nonmoving party. [Citation.]

"When a defendant moves for summary judgment in a situation in which the plaintiff would have the burden of proof at trial by a preponderance of the evidence, the defendant may, but need not, present evidence that conclusively negates an element of the plaintiff's cause of action. Alternatively, the defendant may present evidence to ' "show[ ] that one or more elements of the cause of action . . . cannot be established" by the plaintiff.' [Citation.] ' " ' "The moving party bears the burden of showing the court that the plaintiff 'has not established, and cannot reasonably expect to establish,' " the elements of his or her cause of action.' " ' [Citations.] Once the defendant's initial burden has been met, the burden shifts to the plaintiff to demonstrate, by reference to specific facts, not just allegations in the pleadings, there is a triable issue of material fact as to the cause of action. [Citations.]" (*Roman v. BRE Properties, Inc*. (2015) 237 Cal.App.4th 1040, 1050-1051.)

DISCUSSION

I.

The Trial Court Properly Granted Summary Adjudication of Plaintiffs' Federal Constitutional Claims

Plaintiffs allege that the defendants violated Madrigal's and Martinez's federal constitutional rights by intentionally shining a spotlight in Madrigal's eyes while he operated a motor vehicle. Specifically, plaintiffs assert that the alleged use of the spotlight violated Madrigal's and Martinez's Fourth Amendment right to be free from unreasonable seizures and excessive force, and their Fourteenth Amendment right to substantive due process.

Defendants contended they were entitled to summary adjudication of (1) plaintiffs' claims against the City, because there was no evidence of an LAPD "custom" of using spotlights to stop fleeing motorists, and (2) plaintiffs' claims against the individual officers, because plaintiffs could not identify the particular officer or officers who allegedly shined the spotlight at Madrigal. Defendants are correct on both counts.

A. Constitutional Claims Against the City

"A municipality can be sued under section 1983 for 'constitutional deprivations visited pursuant to governmental "custom." ' (*Monell v. Department of Social Services* (1978) 436 U.S. 658, 690-691 (*Monell*).) However, 'Congress did not intend municipalities to be held liable unless action pursuant to official municipal policy of some nature caused a constitutional tort. In particular, . . . a municipality cannot be held liable *solely* because it employs a tortfeasor—or, in other words, a municipality cannot be held liable under § 1983 on a *respondeat superior* theory.' (*Id*. at p. 691.)" (*Marshall v. County of San Diego* (2015) 238 Cal.App.4th 1095, 1118 (*Marshall*).)

Thus, to establish a 42 United States Code section 1983 claim against the City, plaintiffs must prove that a City employee committed a constitutional violation pursuant "to a formal governmental policy or a long-standing practice or custom which constitutes the standard operating procedure" of the City. (See *Marshall*, *supra*, 238 Cal.App.4th at p. 1118.) To make such a showing, plaintiffs must demonstrate " 'that, through its *deliberate* conduct, the municipality was the "moving force" behind the injury alleged,' and establish a 'direct causal link between the municipal action and the deprivation of federal rights.' [Citation.] Courts are required to 'adhere to rigorous requirements of culpability and causation,' lest 'municipal liability collapse [ ] into *respondeat superior* liability.' [Citation.] This is because, as the United States Supreme Court has 'repeatedly reaffirmed,' in enacting section 1983, 'Congress did not intend municipalities to be held liable unless *deliberate* action attributable to the municipality directly caused a deprivation of federal rights.' " (*Id*. at pp. 1118-1119.)

In its separate statement of undisputed facts in support of its motion for summary judgment, the City asserted that "[n]one of the named officer defendants were trained to shine a spotlight in order to impair a fleeing motorist's vision and ability to operate a vehicle" and "[p]laintiff[s have] no facts to support a *Monell* cause of action that the City had a custom, policy, or practice to shine lights in the eyes of a fleeing suspect to kill him and harm innocent passengers or bystanders." In response to defendants' separate statement, *plaintiffs admitted these facts were undisputed*. Accordingly, there are no

triable issues of material fact with respect to the City's liability for federal constitutional claims.

B. Constitutional Claims Against the Individual Officers

Plaintiffs acknowledge that they do not know which officers allegedly directed the spotlight at Madrigal. They contend, however, that: (1) they need not identify the offending officer or officers to survive summary judgment; and (2) there are triable issues as to whether Officers Castro, Chavez, Pimental, or Scutaro may have been responsible for the improper use of the spotlight. Plaintiffs are wrong on both counts.

1. Plaintiffs' Burden to Identify the Responsible Officers

Plaintiffs characterize as "silly" defendants' contention that plaintiffs must identify the particular officers who committed the alleged federal constitutional violations. Plaintiffs' sole support for this assertion is *Perez v. City of Huntington Park* (1992) 7 Cal.App.4th 817 (*Perez*). There, four police officers employed by the City of Huntington Park responded to the scene of a disturbance, and two of the officers beat the plaintiff, a bystander, without provocation. (*Id.* at p. 819.) Plaintiff sued the four officers and the City. The trial court found that the use of force against the plaintiff was unreasonable, but said it could not determine which of the officers were responsible. It therefore entered judgment in favor of the four officers, but against the City. (*Ibid*.) The City appealed, and the Court of Appeal affirmed, holding that a plaintiff seeking to hold an employer liable for injuries caused by employees acting within the scope of their employment is not required to name the employees. (*Id.* at p. 820.)

As relevant here, while the *Perez* court held that a *municipality* can be liable for its employees' torts even if the employees' identities are unknown, it did not suggest that *individual employees* can be held liable notwithstanding the plaintiff's inability to identify which employees engaged in the alleged wrongful conduct. *Perez* thus provides no support for plaintiffs' contention that they can survive summary judgment against the officers without identifying which officers committed the alleged constitutional violations.

2. No Triable Issues as to the Alleged Culpability of Officers Castro, Chavez, Pimental, or Scutaro

Officers Castro, Chavez, Pimental, and Scutaro each stated in a declaration that he was patrolling the Hollenbeck area of Los Angeles on October 24, 2009, when he heard the broadcasts of the pursuit of Madrigal and of the subsequent collision. Each officer declared that he arrived at the scene of the accident after the pursuit had terminated, and that he did not participate in the actual pursuit, witness the collision, or shine a spotlight at Madrigal's motorcycle.

Plaintiffs concede they have no direct evidence that any of the four officers directed a spotlight at Madrigal, but assert as to Officers Chavez and Castro that the officers' "Daily Field Activities Report" (DFAR) does not accurately account for their whereabouts during the pursuit, and the officers parked their patrol car following the accident in the area "where independent witnesses testified the offending patrol car [i.e., the patrol car that allegedly shined the spotlight at Madrigal] was parked." This evidence, standing alone, is insufficient to raise a triable issue as to whether Chavez and Castro violated Madrigal's and Martinez's federal constitutional rights. " 'It is not enough to produce just some evidence. The evidence must be of sufficient quality to allow the trier of fact to find the underlying fact in favor of the party opposing the motion for summary judgment.' [Citation.]" (*Andrews v. Foster Wheeler LLC* (2006) 138 Cal.App.4th 96, 108; see also *Nardizzi v. Harbor Chrysler Plymouth Sales, Inc*. (2006) 136 Cal.App.4th 1409, 1415 ["The plaintiff does not meet his burden of demonstrating a triable issue where his evidence merely provides 'a dwindling stream of probabilities that narrow into conjecture.' "].) Because plaintiffs' evidence would not support a judgment against Officers Chavez and Castro, it is insufficient to withstand summary judgment.

We reach the same conclusion with regard to Officers Pimental and Scutaro. Plaintiffs have no direct evidence that the officers shone a spotlight at Madrigal, but they assert that the officers "were traveling southbound on Eastern Avenue at the time of the alleged pursuit of Plaintiffs" and "made a u-turn while traveling on Eastern at the time of

the incident." Further, "[e]yewitnesses James Fowler and Catalina Barrientos saw the offending LAPD patrol car traveling southbound on Eastern then make a u-turn at the time of the incident." This evidence would not support a verdict against Officers Pimental and Scutaro, and thus it too is insufficient to withstand summary judgment.

II.

The Trial Court Properly Granted Summary Adjudication of Plaintiffs' State Law Tort Claims

A. State Law Tort Claims Against the City

Plaintiffs' complaints alleged the City was liable for alleged state law torts alleged to have been committed by the individual officers: assault, battery, willful misconduct, negligence, and violations of Civil Code sections 43 and 52.1. The City sought summary adjudication of these claims pursuant to Vehicle Code section 17004.7, which provides immunity to public entities for injuries caused by peace officers in the course of certain vehicular pursuits. For the reasons that follow, summary adjudication was properly granted.

Under California law, a public entity generally is liable "for death or injury to person or property proximately caused by a negligent or wrongful act or omission in the operation of any motor vehicle by an employee of the public entity acting within the scope of his employment." (§ 17001.) An exception to the public entity's liability is set forth in section 17004.7, subdivision (b)(1), which provides: "A public agency employing peace officers that adopts and promulgates a written policy on, and provides regular and periodic training on an annual basis for, vehicular pursuits complying with subdivisions (c) and (d) is immune from liability for civil damages for personal injury to or death of any person or damage to property resulting from the collision of a vehicle being operated by an actual or suspected violator of the law who is being, has been, or believes he or she is being or has been, pursued in a motor vehicle by a peace officer employed by the public entity."

Plaintiffs do not dispute that the LAPD's pursuit policy complies with section 17004.7, subdivisions (c) and (d).[4] They contend, however, that even if a public entity's pursuit policy complies, the immunity afforded by section 17004.7 should not apply if the actual pursuit was not within those guidelines or if the officers engaged in "reckless or intentional police misconduct."

Our analysis of section 17004.7 is guided by settled principles. "The primary objective of statutory interpretation is to ascertain and effectuate legislative intent. [Citation.] To do so, a court first examines the actual language of the statute, giving the words their ordinary, commonsense meaning. [Citation.] The statute's words generally provide the most reliable indicator of legislative intent; if they are clear and unambiguous, '[t]here is no need for judicial construction and a court may not indulge in it.' [Citation.] Accordingly, '[i]f there is no ambiguity in the language, we presume the Legislature meant what it said and the plain meaning of the statute governs.' [Citation.]" [Citation.] (*Cequel III Communications I, LLC v. Local Agency Formation Com. of Nevada County* (2007) 149 Cal.App.4th 310, 318.) If the language is susceptible of more than one reasonable interpretation, " 'we look to a variety of extrinsic aids, including the ostensible objects to be achieved, the evils to be remedied, the legislative history, public policy, contemporaneous administrative construction, and the statutory scheme of which the statute is a part. [Citations.]' [Citation.]" (*People v. Borynack* (2015) 238 Cal.App.4th 958, 962.) In such a case, " ' " 'We must select the construction that comports most closely with the apparent intent of the Legislature, with a view to promoting rather than defeating the general purpose of the statute, and avoid an interpretation that would lead to absurd consequences.' [Citation.]" [Citation.]' " (*Yohner v. California Dept. of Justice* (2015) 237 Cal.App.4th 1, 8.)

Applying these principles, we conclude that the language of section 17004.7, subdivision (b) is not reasonably susceptible of the interpretation plaintiffs propose. The

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[4] Subdivisions (c) and (d) of section 17004.7 prescribe certain minimum standards for a compliant pursuit policy; the details of those minimum standards are not relevant here.

plain language of the statute provides that if a public agency implements a written policy and training regime that complies with statutory requirements, the agency is immune from liability for damages for personal injury to or death of *any* person if the injury or death results from the collision of a vehicle operated by someone who is, or is believed to be, violating the law, and who "is being, has been, or believes he or she is being or has been, pursued in a motor vehicle by a peace officer employed by the public entity." *Nothing* in that language suggests that the public entity's statutory immunity depends on the peace officer's compliance with the law or avoidance of reckless or intentional misconduct. To the contrary, the statute on its face applies to claims arising out of injury to or death "of any person" in the course of a pursuit by law enforcement.

Moreover, both case law and the statute's legislative history fatally undermine plaintiffs' proposed interpretation. In *Nguyen v. City of Westminster* (2002) 103 Cal.App.4th 1161 (*Nguyen*), an individual was killed after police officers chased a stolen vehicle into a high school parking lot as classes were ending. The Court of Appeal held that evidence that the officers' decision to pursue the stolen van onto school property was "unreasonable and reckless" or did not comply with the City's pursuit policy was not relevant to the City's entitlement to summary judgment. (*Id.* at p. 1167.) The court explained: "The case law has rejected this argument. 'The statute is clear: if the agency adopts a pursuit policy which meets the statutory requirements, then immunity results. The extent to which the policy was implemented in general and was followed in the particular pursuit is irrelevant.' " (*Ibid.*)

Following *Nguyen*, the Legislature amended section 17004.7 in 2005 (Stats. 2005, ch. 485, § 11) to increase peace officer training requirements, but it expressly did not premise public agency immunity on officers' compliance with pursuit policies or avoidance of " 'unreasonable and reckless' " conduct. (Sen. Com. on Judiciary, Analysis of Sen. Bill No. 719 (2005-2006 Reg. Sess.) May 10, 2005, p. 2.) In its analysis of the 2005 amendment, the Senate Judiciary Committee explained as follows: "Other bills have previously attempted to overturn the [courts'] narrow reading of Section 17004.7. In 2003, SB 219 (Romero) proposed that immunity be restricted to cases where the peace

officers involved in the pursuit complied with the entity's adopted pursuit policy. In 2004, SB 1866 (Aanestad) proposed that immunity be restricted to cases where the involved peace officers adhered to the written policy, did not act in bad faith, and were not grossly negligent. This year, SB 718 (Aanestad & Romero) would have prevented peace officers from initiating a pursuit when they had no reasonable suspicion that the suspect had committed a violent felony. [¶] All of those bills were opposed by law enforcement groups, who argued that the bills could lead to protracted litigation regarding every pursuit that results in injury to a third party. Those groups argued that alternative measures such as increased criminal penalties and mandatory peace officer training requirements could also effectively address California's large numbers of collisions, injuries, and deaths caused by motor vehicle pursuits. [¶] This bill would enact the measures suggested by law enforcement groups, attaching immunity when public entities adopt and promulgate appropriate policies and institute sufficient training requirements, *regardless of officers' behavior in a particular pursuit*." (Sen. Com. on Judiciary, Analysis of Sen. Bill No. 719 (2005-2006 Reg. Sess.) May 10, 2005, pp. 7-8, italics added.)

We thus conclude that, as a matter of law, the City is immune from liability as to all of plaintiffs' state law tort claims.

B. State Law Tort Claims Against Officers Bonilla, De La Torre, Acosta, and Preciado

Section 17004 provides immunity to public employees for injuries caused in the course of certain vehicular pursuits. It provides: "A public employee is not liable for civil damages on account of personal injury to or death of any person or damage to property resulting from the operation, in the line of duty, of an authorized emergency vehicle while responding to an emergency call or when in the immediate pursuit of an actual or suspected violator of the law . . . ."

Plaintiffs contend that section 17004 does not immunize the officer defendants from liability because the undisputed evidence did not establish that the LAPD patrol cars were "in the immediate pursuit of" Madrigal when he crashed. Plaintiffs also contend

that section 17004 should not be interpreted to immunize police officers from the consequences of reckless or intentional misconduct. For the reasons that follow, we reject both contentions.

1. The Undisputed Evidence Establishes That LAPD Officers Were Pursuing Madrigal When He Crashed

In moving for summary judgment, Officers Bonilla and De La Torre submitted declarations stating that on October 24, 2009, they were patrolling the Hollenbeck area of Los Angeles when they saw two people on a motorcycle travelling on Norelle Street towards Eastern Avenue. They observed the driver almost fall off the motorcycle, fail to stop at a posted stop sign, swerve between traffic lanes, and unsafely pass between a police vehicle and a civilian vehicle. Based on these observations, they believed the driver was under the influence of alcohol or drugs. Therefore, the officers "activated [their] emergency lights and siren, notified communications [they] were in pursuit of a possible DUI driver, and requested backup and an air unit." Approximately 26 seconds later, they "came upon the accident site where the driver, later determined to be Omar Madrigal, failed to negotiate a curve and impacted a parked truck."

Officers Acosta and Preciado submitted similar declarations, to the effect that they saw a motorcycle on Eastern Avenue straddle two lanes and pass between their patrol car and a civilian vehicle. As soon as the motorcycle passed, they heard a broadcast that another LAPD vehicle was in pursuit of the motorcycle and saw the primary unit pass them with its lights and siren on. The officers activated their emergency lights and siren and attempted to notify communications that they were responding as backup, but the air traffic was jammed. Shortly thereafter, they came upon the accident site.

Plaintiffs assert that these declarations do not establish that the patrol cars were "in the immediate pursuit of" Madrigal when he crashed because they do not describe what the officers did in the 26 seconds between notifying communications they were in pursuit of a possible DUI driver and coming upon the accident site. We do not agree. The evidence is undisputed that Officers Bonilla and De La Torre notified their command that they were in pursuit of a possible DUI driver, and that Officers Acosta and Preciado

attempted to notify their command they were responding as backup. It also is undisputed that both squad cars continued to follow Madrigal's motorcycle, coming upon the crash site 26 seconds after the pursuit began, and that neither squad car advised that it had terminated its pursuit until after the crash occurred. Accordingly, the only reasonable inference from the officers' declarations is that they still were in pursuit of Madrigal's motorcycle when it crashed. The trial court did not err in so concluding.

2. Section 17004 Provides Immunity for Even Reckless or Intentional Conduct

Plaintiffs assert that interpreting section 17004 to immunize police officers for intentional or reckless conduct or conduct unauthorized by the police department's policies and procedures would have "absurd and undesirable consequences." They urge: "[I]f all claims are barred, an officer may, during a pursuit, with impunity, push a suspect's car into a concrete barrier, into a downed live electrical pole, or the like. . . . Actions taken during a pursuit should not be afforded an automatic and unchallengeable 'Get out of jail free' card."

Plaintiffs' proposed interpretation of section 17004 was expressly rejected by our Supreme Court in *Cruz v. Briseno* (2000) 22 Cal.4th 568, 572 (*Cruz*). There, a driver was killed during a deputy sheriff's pursuit of a speeding motorist. The appellate court found a triable issue existed whether the deputy acted negligently and thus forfeited his personal immunity under section 17004. (*Cruz*, at p. 570.) The Supreme Court disagreed and reversed, holding the deputy retained his statutory immunity as a matter of law. (*Ibid*.) The court explained: "Does section 17004 withhold immunity in cases involving negligent pursuit? As several appellate decisions have held, the statute contains no provision for loss of immunity due to the officer's negligent or intentional conduct during the pursuit, including his supposedly negligent failure to activate lights or sirens. (See *Weaver v. State of California* (1998) 63 Cal.App.4th 188, 202 [§ 17004 immunity extends to pursuing officers despite their deliberate conduct in ramming vehicle in which the plaintiff was riding]; *City of San Jose v. Superior Court* (1985) 166 Cal.App.3d 695, 698, 701 [immunity despite possible negligence by pursuers]; *City of Sacramento v.*

Superior Court (1982) 131 Cal.App.3d 395, 400 [immunity despite negligent failure to activate red lights and siren]; *Bratt v. City and County of San Francisco* (1975) 50 Cal.App.3d 550, 553; cf. Gov. Code, § 820.2 [discretionary acts immunity], 845.8, subd. (b) [immunity of public entities or their employees from liability for injuries caused by escapees or persons resisting arrest].)" (*Id.* at pp. 572-573.)

For all of these reasons, Officers Bonilla, De La Torre, Acosta, and Preciado were entitled to summary adjudication of plaintiffs' state law tort claims.

C. State Law Tort Claims Against the Remaining Officer Defendants

As we have said, each of the ten other officers named as individual defendants submitted declarations stating he or she either had no involvement with the incident or arrived at the scene after Madrigal crashed. Plaintiffs did submit any contrary evidence. Accordingly, there is no basis for holding any of these ten officers liable for the plaintiffs' state law claims.

DISPOSITION

The judgment is affirmed. Plaintiffs' request for judicial notice is granted. Defendants are awarded their appellate costs.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

EDMON, P. J.

We concur:

ALDRICH, J.

JONES, J.*

* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.